

**TEMPORARY FILING**  
**INCLUDING STATEMENT OF NEED & JUSTIFICATION**  
*For internal agency use only.*

Department of Human Services, Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
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**FILING CAPTION**  
*(Must be 15 words or fewer)*

*APD: Long-Term Care Capital Improvement and Emergency  
Preparedness Program*

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Agency Approved Date: [ 11/29/2021 ]

Effective Date: [ 11/29/2021 ] through [ 3/5/2022 ]

**RULEMAKING ACTION**

*List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing*

**ADOPT:**

411-062-0000; 411-062-0010; 411-062-0020; 411-062-0030;  
411-062-0040; 411-062-0050; 411-062-0060; 411-062-0070;  
411-062-0080

**RULE SUMMARY:**

*Include a summary for each rule included in this filing.*

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is immediately adopting rules in chapter 411, division 062. The following is a summary of the proposed new rules:

**411-062-0000 Purpose** – Created to state the purpose and scope of these rules.

**411-062-0010 Definitions** - Created to list the applicable definitions for the Long-Term Care Capital Improvement Program.

**411-062-0020 Long-Term Care Capital Improvement and Emergency Preparedness Program** – Created to establish the LTCCIEP program and describes overview of program.

**411-062-0030 Application and Prior Authorization** – Created to outline the application process and requirements for pre-authorization.

**411-062-0040 Long Term Care Facility Prioritization** – Created to outline applicant prioritization.

**411-062-0050 Funding Phases** – Created to establish timelines for prior authorization phases. **This updated filing changes the date ranges to submit prior authorization requests for phases two, three, and four.**

**411-062-0060 Maximum Reimbursement Amounts** – Created to establish maximum reimbursement amounts for each phase.

**411-062-0070 Approval and Payment** – Created to outline approval and payment process.

**411-062-0080 Oversight** – Created to outline audit and the process if overpayments are identified.

#### STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The Oregon Legislature (2021 Regular Session) directed the Oregon Department of Human Services to adopt rules for the administration of the Long-Term Care Capital Improvement Program, including requirements and criteria for the application, approval, distribution, and oversight of the program. In making grant award decisions, the department is directed to consider and prioritize long-term care facilities with high Medicaid-census, aging buildings, and upgrades; and, to ensure equitable access across the State. Eligible expenditures include emergency power sources, air quality and HVAC improvements, infectious disease prevention strategies and equipment, technology to facilitate virtual visits and telehealth for residents, and room reconfigurations that reduce the risk of transmitting infectious diseases.

Justification of Temporary Filing:

The COVID 19 pandemic that started in March 2020 and the devastating wildfires in the fall of 2020 exposed gaps in some long-term care facility's abilities to meet resident's needs. In order to assist these facilities in updating equipment and structures to better meet resident's needs, the Oregon Legislature directed ODHS to adopt rules for grants to the facilities most in need. #

Failure to act promptly and immediately amend OAR chapter 411, division 062 will result in serious prejudice to the public interest, the Commission, and residents of long-term care facilities. These rules need to be adopted promptly so that long-term care facilities are better able to meet the needs of their residents during a public health crisis or a state of emergency.

Documents Relied Upon, and where they are available:

Senate Bill 5529 (2021 Regular Session)

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB5529/A-Engrossed>

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

11/29/2021

Signature

Date

**DEPARTMENT OF HUMAN SERVICES  
AGING AND PEOPLE WITH DISABILITIES  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 62**

**LONG-TERM CARE CAPITAL IMPROVEMENT AND EMERGENCY  
PREPAREDNESS PROGRAM**

**411-062-0000 Purpose**

*(Temporary effective 11/29/2021 through 03/05/2022)*

The purpose of this rule is to establish requirements and criteria for the application, approval, distribution, and oversight of the Long-Term Care Capital Improvement and Emergency Preparedness Program (LTCCIEP). This Program provides financial assistance to long term-care providers that are preparing for, responding to, or recovering from a public health emergency.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

**411-062-0010 Definitions**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) "Air Quality and HVAC Improvement" means systems, system improvements, or equipment that reduce air pollutants, prevent or control the spread of infectious disease, and regulate temperature in indoor spaces including air conditioning.

(2) "Emergency System Sources" mean for the purposes of this rule, a backup power source, which need not be installed or integrated into a facility's infrastructure, that the provider may use during a power outage for the purpose of operating critical systems and appliances including refrigeration, portable heating and cooling devices necessary to preserve

medications, supplies, or other equipment critical to a resident's care or immediate safety on a temporary basis. Upgrading fire suppression systems is included in this rule. Licensed facilities are subject to all applicable state and federal licensing standards, i.e., Centers for Medicare and Medicaid.

(3) "Long-Term Care Facility" means:

(a) An Assisted Living Facility licensed under rules contained in Oregon Administrative Rule chapter 411, division 054; or

(b) A Residential Care Facility licensed under rules contained in Oregon Administrative Rule chapter 411, division 054; or

(c) A Nursing Facility licensed by the Department pursuant to Oregon Administrative Rule chapter 411, divisions 085 to 089.

(4) "Infectious Disease Prevention Strategies" means infection control devices or equipment, including technological upgrades that support infection prevention and control.

(5) "Room configurations" means development of negative pressure isolation rooms that prevent the spread of viruses. This may include site-level construction or remodel of resident rooms to reduce per room bed capacity and reduce the spread of infectious diseases.

(6) "Technology and Telehealth" means electronic or virtual means or methods, including but not limited to computer technology, web or internet access, social media, videoconferencing or other technological means or methods to improve resident social isolation and allow for the provision of virtual health care.

(7) "Project" means an effort to promote emergency preparedness, air quality, heating, ventilation, air conditioning, infectious disease prevention, and technology to support virtual visitation for which a grant is sought pursuant to these rules.

Stat. Auth.: 410.070  
Stats. Implemented: 410.070

**411-062-0020 Long-Term Care Capital Improvement and Emergency Preparedness Program**  
*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) The Oregon Department of Human Services establishes the Long-Term Care Capital Improvement and Emergency Preparedness Program (LTCCIEP).

(2) The purpose of the LTCCIEP program is to provide grants to eligible long-term care facilities to improve emergency preparedness, air quality, heating, ventilation, air conditioning, infectious disease prevention strategies, and technology to support virtual visitation.

Stat. Auth.: 410.070  
Stats. Implemented: 410.070

**411-062-0030 Application and Prior Authorization**  
*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) Interested Long-Term Care Facilities must submit a prior authorization request for a grant on a form mandated by the Oregon Department of Human Services (ODHS).

(2) The Department will reimburse facilities only when a prior authorization request was approved, in writing, by the Department.

(3) The Department will consider each prior authorization request in the order of submission. A facility may submit only one request in each phase, as these phases are described in OAR 411-062-0050. Each prior authorization request may include more than one project.

(4) The Department will consider prior authorization requests for any project initiated on or after July 1, 2021. Initiated means any substantive

planning or initiation activities to start a project.

(5) A prior authorization request must include information on how the project will mitigate the spread of viruses, avoid emergency evacuations, improve overall emergency preparedness, or increase resident's health, safety, or ability to communicate during a public health emergency. The prior authorization request must demonstrate an unmet need that will be met through the project.

(6) In accordance with the appropriation authorized by the Oregon legislature, the Department will cease prior authorization of all projects, regardless of phase, once \$30 million in prior authorizations have been approved by the Department.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

#### **411-062-0040 Long Term Care Facility Prioritization**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) Priority 1 applicants include a long-term care facility, constructed prior to 1996, with the following Medicaid census percentages:

(a) Nursing Facility Medicaid occupied census level of 50% or higher on June 30, 2021.

(b) Community-Based Care Facility occupied census level of 40% or higher on June 30, 2021.

(2) Priority 2 applicants include all long-term care facilities not meeting the criteria in (1). Priority within the Priority 2 group will be given to applicants who were enrolled as a Medicaid provider on June 30, 2021.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

#### **411-062-0050 Funding Phases**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) The Department will prior authorize projects in four phases.

(2) Phase 1 consists of Priority 1 applicants requesting grants for Projects including improvements to emergency power sources, air quality, and HVAC systems. Applicants for Phase 1 must submit prior authorization requests between September 13, 2021 and February 28, 2022.

(3) Phase 2 consists of Priority 2 applicants requesting grants for Projects including improvements to emergency power sources, air quality and HVAC system. Applicants for Phase 2 must submit prior authorization requests between January 1, 2022 and June 30, 2022.

(4) Phase 3 consists of Priority 1 applicants requesting grants for Projects including infectious disease prevention, room configuration strategies, technology, and telehealth. Applicants for phase 3 must submit prior authorization requests between March 1, 2022 and August 31, 2022.

(5) Phase 4 consists of Priority 2 applicants requesting grants for Projects including infectious disease prevention, room configuration strategies, technology, and telehealth. Applicants for phase 4 must submit prior authorization requests between May 1, 2022 and October 31, 2022.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

#### **411-062-0060 Maximum Reimbursement Amounts**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) The maximum reimbursement amount for Phase 1 is \$1,500 per licensed bed per facility, up to a maximum of \$100,000.

(2) The maximum reimbursement amount for Phase 2 is \$1,500 per licensed bed per facility, up to a maximum of \$100,000.

(3) The maximum reimbursement amount for Phase 3 is \$20,000.



(4) The maximum reimbursement amount for Phase 4 is \$20,000.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

**411-062-0070 Approval and Payment**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) All prior authorization requests must be approved by the Department in writing to be eligible for reimbursement. The Department will notify facilities in writing if their Project is not approved.

(2) Once work on a Project is completed, the facility must submit a request for reimbursement for the actual cost paid to complete the Project. A request for reimbursement submitted pursuant to this paragraph shall include receipts for actual costs.

(3) The Department will reimburse actual costs, up to 110% of the prior authorized amount, subject to the maximum reimbursement amount described in OAR 411-062-0060. The Department will issue payment within thirty (30) days of receipt of a request for reimbursement submitted pursuant to this rule.

(4) All requests for reimbursement must be received no later than July 31, 2023.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

**411-062-0080 Oversight**

*(Temporary effective 11/29/2021 through 03/05/2022)*

(1) All written prior authorization requests and requests for reimbursement are subject to audit at the discretion of the Department.

(2) The Facility shall be notified in writing of any identified overpayment and of any adjustments to the request for payment.

(3) Payment of any amounts due to the Department must be made within 60 business days of the date of notification to the Facility.

Stat. Auth.: 410.070

Stats. Implemented: 410.070